



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 985 OF 2024

Niraashrit Gauvansh Seva Foundation,
R/o. 72, Raulgaon Dorli, Katol Road,
Tal- Katol, Nagpur, Maharashtra
Having Registration No. 127194
Through its Trustee
Shri Anand Manikchand Zamad,
Age 41 years.

. . . PETITIONER

// VERSUS //

1. The State of Maharashtra
Through Police Station Officer,
Katol Police Station, Nagpur
2. Shaikh Ayub Shaikh Yusuf Kureshi,
alleged Owner of 26 bullocks
R/o. Pethpura, Morshi, Tal- Morshi
Dist. Amravati, Maharashtra.

. . . RESPONDENTS

Shri M. G. Gupta, Advocate for petitioner.
Ms. S. N. Thakur, APP for respondent no. 1.
Shri A. P. Khadatkhar, Advocate for respondent no. 2.

CORAM :- M. W. CHANDWANI, J.

RESERVED ON :- 01.04.2025

PRONOUNCED ON :- 03.07.2025

JUDGMENT :-

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

3. This Writ Petition challenges the order passed by the learned Judicial Magistrate First Class, Katol dated 19.11.2024 allowing the Criminal M. A. No. 130/2024 filed by respondent no. 2 thereby giving interim custody of 26 animals seized by the Police in Crime No.970/2024 registered with Police Station, Katol for the offence punishable under Sections 291 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Section 11(c) of the Prevention of Cruelty to Animals Act, 1960 (for short, “the Act of 1960”) and the order dated 03.12.2024 of the learned Additional Sessions Judge, Nagpur in Criminal Revision No. 248/2024.

4. As per the case of the prosecution, the Police got information that some persons are transporting animals for the purpose of selling them to a slaughter house and have tied them in a cruel manner. Therefore, the Police alongwith Panchas went there and found that three persons were carrying 26 animals by road on foot and the animals were tied with each other. Upon enquiry, they did not answer satisfactorily and therefore, the aforesaid offence came to be registered against those persons and the animals were also seized. Pending the investigation, the Police handed over the custody of the animals to the petitioner, a voluntary organization. Thereafter, the owner of the said animals filed an application claiming that he had purchased those animals and prayed for grant of temporary custody of the animals.

5. The learned Magistrate opined that respondent no. 2 is the owner of the seized animals and also observed that the animals were being carried on foot by road. Just because 3 to 4 animals were tied with each other with a rope in one group, it does not amount to cruelty, more particularly in absence of any medical certificate showing that the said animals suffered injuries. By holding that there is no material to show that the animals were being carried for slaughtering, the learned Magistrate allowed the application for temporary custody of the animals filed by respondent no. 2 and rejected the application of the petitioner for intervention, thereby directing the petitioner to hand over the custody of the seized animals to respondent no. 2 pending trial on certain conditions as enumerated in the order dated 19.11.2024 including the directions to produce the animals as and when directed by him. Feeling aggrieved with the said order, Revision came to be filed by the petitioner. The order of the learned Magistrate was upheld in Revision except the quantum of maintenance to be paid to the petitioner. The learned ASJ opined that instead of maintenance of Rs.120/- per animal, maintenance of Rs.200/- per animal is required to be paid to the petitioner. The petitioner has carried both the orders before this Court by way of the present Writ Petition mainly on the ground that the custody of the animals ought not to have been granted to respondent no. 2.

6. Mr. Gupta, learned counsel for the petitioner vehemently submitted that the petitioner is a voluntary organization and is taking care of Cows and Bullocks. According to him, if animals are seized on the allegations of cruelty or on the allegations that the animals are being carried for the purpose of slaughtering, the Police can seize the animals. In addition to that, it is the duty of the learned Magistrate to give the custody of those animals to the nearest Gosadan, Goshala, Pinjrapole, Hinsa Niwaran Sangh pending trial. If the accused are convicted either under the provision of the Act of 1960 or The Maharashtra Animal Preservation Act, 1976 (for short, “the Act of 1976”), the animals are liable to be forfeited and they will be free for adoption by a Gosada, Goshala or Pinjrapole. According to him, there is no provision to hand over the custody of the animals to the owner till conclusion of the trial.

7. To buttress his submission, he seeks to reply on various authorities more particularly, upon the case of ***Shri Chatrapati Shivaji Gaushala Vs State of Maharashtra***¹ wherein, the Supreme Court in para no. 20 of the decision has held as under:-

“20. The intention of the legislature in incorporating the proviso to Section 8(3) was to give effect to the object of the Maharashtra Act to preserve and protect cows, bulls, and bullocks useful for milch, breeding, draught, or agricultural purposes. The proviso to Section 8(3) of the Maharashtra Act provides for handing over of the seized cow, bull, or bullock to the nearest gosadan, goshala, pinjrapole, hinsa nivaran sangh

or such other animal welfare organization willing to accept such custody. In the present case, the appellant was willing and ready to accept custody of the seized cattle. In light of the prima facie observation that the private respondents were in violation of the Transport of Animal Rules 1978, it was incumbent upon the High Court to ensure that the seized cattle would be properly preserved and maintained until the conclusion of the trial proceedings.”

8. Reliance is also placed upon proviso to Section 8(3) of the Act of 1976 which provides that pending the trial, the seized Cow, Bull or Bullock shall be handed over to the nearest Gosadan, Panjrapole, Hinsa Nivaran Sang or such other Animal Welfare Organization willing to accept such custody and the accused shall be liable to pay for their maintenance for the period that they remain in custody with any of the said institutions or organizations as per the order of the Court.

9. The learned counsel for the petitioner has also placed reliance on various provisions of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rule, 2017. Rule 8(1) of the said Act provides that if the accused is convicted, the animals are to be forfeited and handed over to an infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala already having custody for proper adoption or other disposition.

10. I have heard the learned counsel for the petitioner as well as the learned APP for the State and also gone through the First Information Report. It appears from the FIR that the accused persons

were carrying those animals on foot by road and 2 animals were tied together in a group. When they were apprehended, they informed that after the owner purchased those animals, they were asked to carry those animals to the destination. There is nothing on record to suggest that the animals were taken for the purpose of slaughtering except the apprehension of the Investigating Officer. Rather, respondent no. 2 produced the trade licence for trading animals issued to him by Market Committee, Morshi and APMC, Narkhed and the purchase receipt issued by APMC, Katol. Therefore, the learned Magistrate recorded a finding that there is no material to show that the animals were for the purpose of slaughtering and were being subjected to cruelty which was also affirmed by the Revisional Court.

11. In absence of *prima facie* material to show that there was cruelty to the animals which were being carried by the accused persons or they were being taken for the purpose of slaughtering coupled with the fact that all necessary documents were produced by the petitioner, no interference is required in the order of the learned Magistrate which is modified by the Revisional Court only to the extent of quantum of maintenance while maintaining the order of giving temporary custody of the animals to respondent no. 2.

12. In the case of *Shri Chatrapati Shivaji Gaushala (supra)* there was a finding recorded by the High Court that there was cruelty to the animals which were seized by the Police. Whereas, in the present case there is no material on record to *prima facie* show that the animals were subjected to any form of cruelty which is also recorded by the Trial Court as well the Revisional Court. Therefore, the case of *Shri Chatrapati Shivaji Gaushala (supra)* will not be helpful to the petitioner. For the same reason, the other decisions relied upon by the learned counsel for the petitioner will also not be helpful.

13. In the result, the petition is dismissed.

(M. W. CHANDWANI, J.)